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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/601,540	09/06/2000	David Tomanek	6550-000017	4174

7590 08/03/2006
Harness Dickey & Pierce
P O Box 828
Bloomfield Hills, MI 48303

EXAMINER

BRITTAIN, JAMES R

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 08/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/601,540

Applicant(s)

TOMANEK ET AL.

Examiner

James R. Brittain

Art Unit

3677

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 July 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

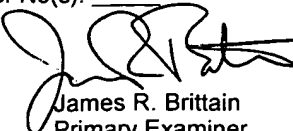
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 1, 24-27, 35, 36, 39-42, 44-47, 50, 51, 57, 58, 61-65, 70, 71, 73 and 85-87.
Claim(s) objected to: None.
Claim(s) rejected: 28, 29, 48 and 49.
Claim(s) withdrawn from consideration: None.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.


James R. Brittain
Primary Examiner
Art Unit: 3677

Continuation of 3. NOTE: Applicant states "Claim 28 further defines the invention by claiming an embodiment where at least some of the extending nanotubes of the first element and/or at least some the the extending nanotubes of the second element are 'functionalized to a non-linear shape'," (remarks, page 9, lines 16-19). Comparing applicant's comment with the claim language shows that the comment specifically utilizes a definite article to refer to "the" extending nanotubes of the first element and "the" extending nanotubes of the second element, while the claim language does not specifically refer to "the" extending nanotubes of the first element or the "the" extending nanotubes of the second element. While applicant's comments are consistent with the basis upon which the final rejection was made, applicant has not provided a claim construction consistent with the remarks. The claim construction should be made consistent with the remarks without using "and/or", which would be considered indefinite. As to claim 49, applicant's proposal would make it depend from claim 44 and that "the extending nanotubes comprise loops". Claim 44 indicates "at least some of which comprise nanotubes selected from the group consisting of a) hooks, and b) spirals". Claim 49 makes it unclear whether some of the nanotubes are still from the group consisting of a) hooks and b) spirals, or if they can all be loops and somehow contradict the subject matter of claim 44. This is a new issue as only some of the extending nanotubes can comprise loops and be consistent with the construction of claim 44.